

mere fact that the physician's or other person's customary charge is higher than prevailing would not justify a determination that it is reasonable.

(Secs. 1102, 1842(b) and 1871, 1903(i)(1) of the Social Security Act; 49 Stat. 647, 79 Stat. 302, 310, 331; 86 Stat. 1395, 1454; (42 U.S.C. 1302, 1395u(b), 1395hh, 1396b(i)(1)))

[43 FR 32300, July 26, 1978]

**§ 405.507 Illustrations of the application of the criteria for determining reasonable charges.**

The following examples illustrate how the general criteria on customary charges and prevailing charges might be applied in determining reasonable charges under the supplementary medical insurance program. Basically, these examples demonstrate that, except where the actual charge is less, reasonable charges will reflect current customary charges of the particular physician or other person within the ranges of the current prevailing charges in the locality for that type and level of service:

The prevailing charge for a specific medical procedure ranges from \$80 to \$100 in a certain locality.

Doctor A's bill is for \$75 although he customarily charges \$80 for the procedure.

Doctor B's bill is his customary charge of \$85

Doctor C's bill is his customary charge of \$125

Doctor D's bill is for \$100, although he customarily charges \$80, and there are no special circumstances in the case.

The reasonable charge for Doctor A would be limited to \$75 since under the law the reasonable charge cannot exceed the actual charge, even if it is lower than his customary charge and below the prevailing charges for the locality.

The reasonable charge for Doctor B would be \$85, because it is his customary charge and it falls within the range of prevailing charges for that locality.

The reasonable charge for Doctor C could not be more than \$100, the top of the range of prevailing charges.

The reasonable charge for Doctor D would be \$80, because that is his customary charge. Even though his actual charge of \$100 falls within the range of prevailing charges, the reasonable charge cannot exceed his customary charge in the absence of special circumstances.

**§ 405.508 Determination of comparable circumstances; limitation.**

(a) *Application of limitation.* The carrier may not in any case make a determination of reasonable charge which would be higher than the charge upon which it would base payment to its own policyholders for a comparable service in comparable circumstances. The charge upon which it would base payment, however, does not necessarily mean the amount the carrier would be obligated to pay. Under certain circumstances, some carriers pay amounts on behalf of individuals who are their policyholders, which are below the customary charges of physicians or other persons to other individuals. Payment under the supplementary medical insurance program would not be limited to these lower amounts.

(b) *When comparability exists.* "Comparable circumstances," as used in the Act and this subpart, refers to the circumstances under which services are rendered to individuals and the nature of the carrier's health insurance programs and the method it uses to determine the amounts of payments under these programs. Generally, comparability would exist where:

(1) The carrier bases payment under its program on the customary charges, as presently constituted, of physicians or other persons and on current prevailing charges in a locality, and

(2) The determination does not preclude recognition of factors such as speciality status and unusual circumstances which affect the amount charged for a service.

(c) *Responsibility for determining comparability.* Responsibility for determining whether or not a carrier's program has comparability will in the first instance fall upon the carrier in reporting pertinent information about its programs to the Centers for Medicare & Medicaid Services. When the pertinent information has been reported, the Centers for Medicare & Medicaid Services will advise the carrier whether any of its programs have comparability.